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Case Farms of N.C., Inc. and National Poultry Workers Organizing Committee, affiliated with the Laborers' International Union of North America, AFL-CIO. Case 11-CA-16814

March 7, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge filed by the Union on January 8, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 17, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 11-RC-6089. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On February 9, 1996, the General Counsel filed a motion to strike portions of Respondent's answer to complaint and Motion for Summary Judgment, with a memorandum in support. On February 13, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motions should not be granted. On February 26 and 27, 1996, respectively, the Union and the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a North Carolina corporation with facilities located at Morganton, North Carolina, is engaged in the production, processing, distribution, and sale of processed poultry products. During the 12 months preceding issuance of the complaint, the Respondent purchased and received at its Morganton, North Carolina facilities goods and materials valued in excess of \$50,000 directly from points outside the State of North Carolina, and sold and shipped from its Morganton, North Carolina facilities products valued in excess of \$50,000 directly to points outside the State of North Carolina.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held July 12, 1995, the Union was certified on December 12, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees including processing employees, maintenance employees, garage employees, waste water employees, long haul drivers, and trainers, employed at Respondent's Morganton, North Carolina, facilities, excluding hatchery, feed mill and live haul employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On December 14, 1995, the Union requested the Respondent to bargain, and since December 29, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹ Inasmuch as we are granting the General Counsel's Motion for Summary Judgment, we find it unnecessary to pass on the motion to strike portions of the Respondent's answer.

CONCLUSION OF LAW

By refusing on and after December 29, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785, 787 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Case Farms of N.C., Inc., Morganton, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with National Poultry Workers Organizing Committee, affiliated with the Laborers' International Union of North America, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees including processing employees, maintenance employees, garage employees, waste water employees, long haul drivers, and trainers, employed at Respondent's Morganton, North Carolina, facilities, excluding hatchery, feed mill and live haul employees, office clerical

employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Morganton, North Carolina, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 11 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 7, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with National Poultry Workers Organizing Committee, affiliated with the Laborers' International Union of North America, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees including processing employees, maintenance employees, garage employees, waste water employees, long haul drivers,

and trainers, employed at our Morganton, North Carolina, facilities, excluding hatchery, feed mill and live haul employees, office clerical employees, guards and supervisors as defined in the Act.

CASE FARMS OF N.C., INC.